IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Misc. Petition . No.728/2005.
(Dr. Narendra Kumar Kadam Vs. State of Rajasthan)

DATE OF ORDER : July 07, 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Sandeep Mehta for petitioner.
Mr. Ashok Upadhyay, P.P. for the State .

BY THE COURT :

By way of filing the present petition under Section 482, Cr.P.C. the petitioner has challenged order dated 18.06.2005 by which the learned revisional Court upheld the order dated 28.10.2004 passed by the Chief Judl. Magistrate, Udaipur rejecting application of the petitioner filed under Section 197, Cr.P.C.

Facts of the case indicate that the petitioner was working on the post of Radiologist on 28.07.2000 when petitioner had occasion to examine an X-ray plate of one Mariam and upon examination of the X-ray plate the petitioner could not observe any bone injury and reported his opinion accordingly. Subsequent thereto, the petitioner was called in evidence in the Court and perused the said X-ray plate in the Court. In the Court, the petitioner observed fracture in the

radius and ulna bone and he stated the same before the Court. When he was confronted with his opinion reported earlier the petitioner stated that it was mistakenly mentioned that there is no bony injury. Upon this, the trial Court directed registration of FIR against the petitioner. However, the police after investigation submitted FR in the matter stating that the act of the petitioner was not intentional and was a human error. However, the trial Court took cognizance and did not accept the FR submitted by the police. Before the learned Chief Judl. Magistrate, the petitioner moved an application under Section 197, Cr.P.C. stating that the report prepared by the petitioner was prepared in the discharge of his official duties and it was simply by an error that opinion of "no bony injury" was given in the X-ray report. Accordingly, the petitioner prayed that he was entitled to the benefit under Section 197, Cr.P.C. The said application was, however, rejected by the trial Court by order dated 28.10.2004.

Learned counsel for the petitioner contended that opinion was given by the petitioner in the discharge of his official duties as Radiologist. He contended that the petitioner is a public servant entitled to the protection under Section 197, Cr.P.C. which clearly envisages that previous sanction of the State Government must be obtained before cognizance is taken by the Court for prosecution of that person if that person is accused of any offence alleged to have been committed by him while acting or purporting to act in the

discharge of his official duty. It is vehemently argued that the provision is mandatory and the Court has neither discretion nor choice in the facts and circumstances. In support of his contention, learned counsel for the petitioner invited attention of the Court towards various judgments and argued that it is settled proposition of law that there is protection to the public servant under Section 197, Cr.P.C. and in this case sanction has not been obtained under Section 197, Cr.P.C. and therefore the cognizance taken by the Court below is illegal and requires to be quashed.

The learned Public Prosecutor opposed the petition and contended that if any criminal act is committed while discharging official duty, in every case, sanction of the Government is not required to be obtained.

I have perused the impugned orders and gone through the judgments cited by the learned counsel for the petitioner as well as provisions of Section 197, Cr.P.C. It is clear from the facts of the case that FIR was filed against the petitioner on the direction of the Court though explanation was given and correct position was stated by the petitioner before the Court. From the language of Section 197 of the Code of Criminal Procedure, it is obvious that even if the Court was not inclined to accept the FR filed by the investigating agency it could at best have directed the agency to seek sanction from the Government for prosecution of the petitioner for reasons recorded by

the Court for not accepting the police FR because the language of the Section binds the Court with the mandate not to take cognizance of such offence except with the previous sanction of the Government. It is not in dispute that the petitioner is a public servant and the incriminating act assigned to the petitioner is an act done in the course of discharge of the official duty. In the circumstances, the order of cognizance passed by the trial Court is illegal and deserves to be set aside.

Consequently, this petition is allowed. The impugned order dated 28.10.2004 as well as order dated 18.06.2005 passed by the revisional Court is set aside. The application filed by the petitioner under Section 197, Cr.P.C. is allowed and cognizance taken by the learned Civil Judge (Sr. Dn.)-cum-Addl. Chief Judl. Magistrate, Udaipur in Criminal Case No.318/04 dated 11.09.2003 is quashed.

(Gopal Krishan Vyas) J.